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7 IN THE UNITED STATES DISTRICT COURT

8 EASTERN DISTRICT OF CALIFORNIA

9 UNITED STATES OF AMERICA,

10 CASE NO. 1:20-CR-00238-JLT

11 Plaintiff,

12 v.  
13 KENNETH JOHNSON, and  
14 Defendants.

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UNITED STATES' RESPONSE TO  
DEFENDANT'S MOTION TO  
RECONSIDER

KENNETH JOHNSON, and  
FRANCIS CLEMENT,

Defendants Johnson and Clement moved for a continuance of their sentencing, currently set for May 19, 2025. ECF 1877. That motion was denied on May 14, 2025. ECF 1896. Defendants now move for reconsideration of that ruling. ECF 1901. This Court should uphold the previous denial, as defendants are not accurate as to the state of the law as it pertains to the Court's jurisdiction over a motion for new trial.

Federal Criminal Procedure Rule 33 provides that a motion for a new trial must be filed within three years after the verdict. Inherent in the Rule's time to file such a motion is the fact that a motion for new trial can be filed during or after an appeal, if within three years of the verdict. "Where a motion is made under Fed. R. Crim. P. 33 for a new trial on the ground of newly discovered evidence, the motion may be heard during the pendency of an appeal (and may be denied), but the motion may not be granted until the case has been remanded." *United States v. Coleman*, 688 F.2d 663 (9th Cir. 1982), citing *United States v. Frame*, 454 F.2d 1136, 1138 (9th Cir.), cert. denied, 406 U.S. 925, 92 S.Ct. 1794, 32 L.Ed.2d 126 (1972). Thus, the Court retains jurisdiction for a motion for a new trial.

1           Accordingly, the Court's previous denial of the motion to continue sentencing was appropriate  
2 and should be affirmed.

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5           Dated: May 13, 2025

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MICHELE BECKWITH  
Acting United States Attorney

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9           By: /s/ Stephanie M. Stokman  
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